IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A No. 3060 of 1984
Date of Decision : 14.11.2007

The State of Punjab through Collector, Jalandhar/Secretary Ministry of Revenue, Punjab, Chandigarh.

.....Appellant

Versus

Darshan Singh & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. H.S. Gill, DAG, Punjab
for the appellant.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgment and decree passed by the learned Addl. District Judge, Jalandhar reversing the judgment and decree passed by the learned Sub Judge Ist Class, Jalandhar in a suit for declaration filed by the plaintiff respondents No. 1 & 2.

The plaintiffs brought a suit for declaration by pleading that father of defendant No.2 had taken agricultural loan of Rs. 5000/- (Rupees five thousand only) from defendant No.1and as security thereof mortgaged his land. It was claimed that plaintiffs had forwarded the said application and never stood surety for the loan. It was the case of the plaintiff respondents that the Tehsildar has wrongly described them as sureties in the order dated 5.1.1978 and by taking ex parte proceedings

ordered the recovery of the due amount by attachment of the property of the plaintiffs. The order passed by the Tehsildar on 5.1.1978 was challenged to be unconstitutional and mala fide and not binding on them. Relief for permanent injunction was also claimed restraining defendant No.1 from recovering the amount from the plaintiffs.

The suit was contested. On the pleadings of the parties, following issues were framed :-

"1. Whether the plaintiff did not stand surety for Khazan Singh in respect of the loan of Rs. 5000.- as alleged ? OPP

2. Whether the order dated 5.1.1978 passed by the Tehsildar Jalandhar is illegal, without jurisdiction ultra vires and unconstitutional ? OPP

3. Whether the suit is bad for non-joinder of necessary parties ? OPD

4. Whether the civil Court has no jurisdiction to try this suit ? OPD

5. Whether the suit is barred by time ? OPD

6. Relief."

The learned trial Court decided issue No.1 against the plaintiffs and held that the plaintiffs stood sureties for Khazan Singh in respect of loan amount of Rs. 5000/- (Rupees five thousand only). The other issues were also decided against the plaintiffs and in favour of the defendants. Consequently, the suit was dismissed.

In appeal, the learned lower appellate Court was pleased to affirm the findings recorded by the learned trial Court on issue No.1 and

was pleased to hold that plaintiffs stood sureties of Khazan Singh with respect of loan amount of Rs. 5000/- (Rupees five thousand only). However, they were discharged of their liability by invoking Section 141 of the Indian Contract Act which reads as under :-

> "Surety's right to benefit of creditor's securities- A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

It was not in dispute that the loan of Rs. 5000/- (Rupees five thousand only) was given to the principal debtor against the mortgage of his agricultural land and the defendant appellant lost the said surety by permitting the principal debtor to dispose of the same. In view of this the learned lower appellate Court was pleased to observe that the surety stands discharged of its liability to the extent of the value of the security of the land in view of Section 141 of the Indian Contract Act. The learned lower appellate Court also placed reliance on the judgment of the Hon'ble Supreme Court in the case ***the State Bank of Surashtra Vs. Chitranjan Hangnath Raja and another AIR 1980 Supreme Court 1528***, wherein it was held as under :-

> "Contract Act (1872), Ss. 141, 139 – Cash credit facility by Bank on pledged goods and surety- pledged goods lost due to Bank's negligence – Surety, held discharged to the extent of security lost."

In view of this, the suit filed by the plaintiff-respondents was decreed and the State had been restrained from recovering the amount from the principal debtor.

The learned counsel appearing on behalf of the State-appellant contents that the judgment and decree passed by the learned lower appellate Court cannot be sustained as the same suffers from a contradictory finding. The contention of the learned counsel for the appellant is that once on issue No.1 the finding by the learned trial Court was affirmed, it was not open to the learned lower appellate Court to have set aside the judgment and decree by accepting the appeal. This plea of the appellant cannot be accepted as it is not in dispute that loan was given against the mortgage of the land to the principal debtor and the same was lost, therefore, the learned lower appellate Court was right in invoking the provisions of Section 141 of the Indian Contract Act to decree the suit of the plaintiff respondents.

No question of law muchless substantial substantial question of law arises in this appeal for consideration.

Dismissed.

14.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**